



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1993

Honorable Joe F. Grubbs
Ellis County and District Attorney
Ellis County Courthouse
Waxahachie, Texas 75165-3759

Letter Opinion No. 93-56

Re: Whether a municipality generally must comply with subchapter C of chapter 395 (sections 395.041 through 395.058) of the Local Government Code before enacting or imposing a water tap fee to pay for the installation of a water line to serve new development (ID# 19594)

Dear Mr. Grubbs:

You inform us that the City of Midlothian, Texas, plans to install a water line to provide service to new customers within the existing corporate city limits. The city desires to adopt an ordinance which would recover the cost of the new line by charging "water tap fees based upon the percentage of front footage or total acreage served by the water line." You ask whether the city, which is a "municipality" as defined in section 1.005 of the Local Government Code, may pass such an ordinance without following the procedures set forth in subchapter C of chapter 395 of the code.

Section 395.001 of the code contains the following relevant definitions:

In this chapter:

(1) "Capital improvement" means any of the following facilities that have a life expectancy of three or more years and are owned and operated by or on behalf of a political subdivision:

(A) *water* supply, treatment, and *distribution facilities*; wastewater collection and treatment facilities; and storm water, drainage, and flood control facilities; whether or not they are located within the service area . . .

. . . .

(2) "Capital improvements plan" means a plan required by this chapter that identifies capital improvements or *facility expansions* for which impact fees may be assessed.

(3) *"Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or expansion of an existing facility to better serve existing development.*

(4) *"Impact fee" means a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition. . . .*

....

(6) *"New development" means the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increase the number of service units.*

(7) *"Political subdivision" means a municipality [or other specified units of government].*

Local Gov't Code § 395.001(1)-(7) (emphasis added). The water line about which you write is a "facility expansion" as defined above because it would be an "expansion of the capacity of an existing [water distribution] facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development."¹ *Id.* § 395.001(3). The water tap fee that you describe constitutes an "impact fee" as defined in subsection (4) of section 395.001.

Section 395.011, subsection (a), provides: "Unless otherwise specifically authorized by state law or this chapter, a governmental entity or political subdivision may not enact or impose an impact fee." Subchapter C of chapter 395 (sections 395.041 through 395.058) contains the general procedures for adoption of an "impact fee." Section 395.041 provides: "Except as otherwise provided by this chapter, a political subdivision must comply with this subchapter to levy an impact fee." Your letter does not indicate the applicability of any exception to the requirement of compliance with subchapter C.

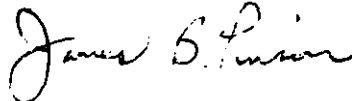
¹We assume that the contemplated water line is intended to "serve new development" rather than "to better serve existing development." Local Gov't Code § 395.001(3).

For the foregoing reasons we conclude that the city must comply with subchapter C before it enacts or imposes the contemplated water tap fee.

S U M M A R Y

A general-law, home-rule, or special-law municipality generally must comply with subchapter C of chapter 395 (sections 395.041 through 395.058) of the Local Government Code before enacting or imposing a water tap fee to pay for the installation of a water line to serve new development.

Yours very truly,

A handwritten signature in cursive script, appearing to read "James B. Pinson".

James B. Pinson
Assistant Attorney General
Opinion Committee